SUPREME COURT, U. S.

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In The

SUPREME COURT of the UNITED STATES

October Term, 1974

No. 74-5961

WALLACE F. THRALL,

Petitioner,

vs.

CECIL M. WOLFF, Regional Commissioner,
Internal Revenue Service,
and

GEORGE P. SHULTZ,
Secretary of Treasury,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF AND APPENDIX

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PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Seventh Circuit entered upon August 23, 1974 reversing the decree of the District Court of the United States for the Eastern District of Wisconsin entered upon November 21, 1972.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Eastern District of Wisconsin are printed in the appendix to this petition.

BASIS OF JURISDICTION

This petition seeks review of a decree of the United States Court of Appeals for the Seventh Circuit which was entered on the 23rd day of August, 1974.

Jurisdiction is invoked under Section 1254(1) of Title 28 of the United States Code.

QUESTIONS PRESENTED

1. Does a refusal by the Secretary of the Treasury to issue a license as a dealer in firearms pursuant to 18 U. S. C. Section 923(a) to a person who has been fully pardoned after conviction of a felony violate the concept of equal protection which is encompassed in the due process clause of the Fifth Amendment to the United States Constitution?

2. Can federal officers (the Secretary of the Treasury and his agent, the Regional Commissioner of the Internal Revenue Service) legally disregard a governor's pardon which granted petitioner a full pardon and restoration of all civil rights lost by reason of his conviction of a felony and thereby deny petitioner a license as a dealer in firearms pursuant to 18 U. S. C. Section 923(a)?

CONSTITUTION INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTES INVOLVED

18 U. S. C., Ch. 44, provides in relevant part:

§ 922. *Unlawful* acts

* * *

(g) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

to ship or transport any firearm or ammunition in interstate or foreign commerce.

(h) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * *

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

§ 923. *Licensing*

(a) No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary [of the Treasury]. * * * *

* * *

(d) (1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

* * *

(b) the applicant * * * is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (h) of this chapter * * * [.]

§ 925. *Exceptions: Relief from disabilities*

* * *

(c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, re-

ceipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. * * *

28 U. S. C. § 1739 provides in relevant part:

> Such (nonjudicial) records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.

SUMMARY STATEMENT

Petitioner Thrall brought this action for review of a decision by the Internal Revenue Service denying his application for a license as a dealer and manufacturer of firearms. Respondents are the IRS Regional Commissioner and the Secretary of the Treasury. The district court denied respondents' motion for summary judgment. *Thrall v. Wolfe*, 352 F. Supp. 1074 (E. D. Wis., 1972). Subsequently, the court granted petitioner's cross motion, and ordered the Secretary to reconsider the license application without regard to petitioner's prior felony conviction. The Seventh Circuit Court of Appeals reversed and ordered entry of summary judgment for respondents.

Petitioner constructs replica antique guns and repairs modern hunting weapons. Incidentally to that business, he applied under 18 U. S. C. § 923 for a license as a dealer and manufacturer of firearms. Petitioner, however, had been convicted in 1942 by a Montana state court of assault in the first degree (a felony) and sentenced to 5 years in prison. This offense involved the use of a loaded pistol. Section 922(g) prohibits any person convicted of a crime punishable by more than one year's imprisonment from shipping or transporting any firearm or ammunition in interstate commerce. Section 922(h) prohibits such person from receiving any firearm or ammunition which has been so transported. Section 923(d) (1) (B), in turn, bars issuance of a firearms dealer license to one so prohibited under § 922(g) and (h). On this basis, the IRS denied petitioner's application.

Petitioner then obtained a pardon for his 1942 offense from the governor of Montana. The pardon provided: "I do hereby grant Wallace M. Thrall Full Pardon and Restoration of all Civil Rights lost by reason of the above conviction, and the right to receive, possess, or transport in commerce a firearm." Accordingly, petitioner renewed his license application, and a hearing was held. The hearing examiner concluded that a state governor's pardon did not remove the disabilities which § 922 imposes. The Assistant Regional Director of the Internal Revenue Service agreed, and again refused to issue the license.

FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

Judicial rview of the refusal of the Assistant Regional Director of the Internal Revenue Service to issue a license was sought in the District Court under 18 U. S. C. Sec. 923(f) (3).

REASONS FOR GRANTING THE PETITION

This case presents an important question of federal law which has been decided differently by two United States Courts of Appeals.

The Court of Appeals for the Second Circuit has determined the effect of a pardon to be as follows:

> ". . . the effect of a free pardon in this country has been referred to by the Supreme Court as releasing the punishment and blotting out the existence of guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense. And 'it makes him, as it were, a new man, and gives him a new credit and capacity.'" *United States ex rel. Palermo v. Smith*, 17 F. 2d 534 (2d Cir. 1927).

This case was cited and followed by the trial court in the instant case.

However, the Seventh Circuit Court of Appeals upon review concluded "That there is nothing inherent in a state pardon which compels the federal government to disregard the pardoned offense." *Thrall v. Wolfe et al.* (7th Cir. 1974, attached in appendix)

The Supreme Court, construing Article II, § 2 of the Constitution, the presidential power to pardon federal offenders, stated in *Ex Parte Garland,* 71 U. S. (4 Wall.) 366, 371 (1866):

> "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense."

Thus the question is presented as to whether there is a distinction between the efficacy of a presidential (federal) pardon and gubernatorial (state) pardon.

There is also a question as to whether the Secretary of the Treasury and his agents can lawfully disregard 28 U. S. C. 1739 which requires federal courts and offices to accord full faith and credit to the nonjudicial records of the States.

WHEREFORE, it is respectfully submitted that this petition for a writ of ceriorari to review the judgment of the United States Court of Appeals for the Seventh Circuit should be granted.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. EQUAL PROTECTION OF THE LAW

Although the equal protection clause of the Fourteenth Amendment is not applicable to federal law, the concept of equal protection is encompassed in the due process clause of the Fifth Amendment. *Johnson v. Robison,* 42 U. S. L. W. 4313, 4314 n. 4 (U. S. Sup. Ct. March 4, 1974); *Shapiro v. Thompson,* 394 U. S. 618, 642 (1969); *Schneider v. Rusk,* 377 U. S. 163, 168 (1964); *Bolling v. Sharpe,* 347 U. S. 497, 499 (1954).)

Denial of a license to the petitioner after a full and complete pardon which specifically included the right to deal in firearms denies him equality with other citizens of the United States who may obtain such licenses.

It operates to put him in a separate category of persons despite the fact that his pardon blotted out the guilt so that in the eye of the law, he is as innocent as if he had never committed the offense. *Ex Parte Garland,* 71 U. S. (4 Wall.) 366, 371 (1866).

Accordingly, petitioner is denied equal protection of the law in violation of his Fifth Amendment right to due process.

This discrimination is contrary to the American ideal of fairness and so unjustified as to be violative of due process. *Bolling v. Sharpe, supra.*

II. EFFICACY OF A PARDON

It is readily evident on the face of the pardon that the Governor of Montana acted to restore petitioner to the status he enjoyed before his conviction: ". . . I hereby grant Wallace F. Thrall Full Pardon and Restoration of all Civil Rights lost by reason of the above conviction, and the right to receive, possess, or transport in commerce a firearm."

In effect the Governor had specifically declared that petitioner's record with the State of Montana was clear; the offense had been expunged, and Mr. Thrall was entitled to be treated like any other citizen.

The Secretarial act of refusing to license Mr. Thrall has the effect of rendering the pardon impotent and is contrary to settled legal principals. A pardon must be construed to carry out the intention of the grantor and most liberally in favor of the person pardoned. 67 C. J. S., Pardons, Sec. 11.

In the case of a full pardon, it relieves the punishment and blots out of existence the guilt of the offender to such an extent that in the eye of the law he is as innocent as if he had never committed the offense. In the case of a full pardon, any attempt to restrict its effect, even by express terms, so as to leave the legal disabilities of a conviction resting upon the convict would be repugnant to the grant, and void. 59 Am. Jur. 2d, Pardon and Parole, Sec. 51.

The Secretarial act is contrary to the doctrine of comity and consequently should be avoided.

This court has recently discussed the question and said of federal non-interference that it is ". . . reinforced by an even more vital consideration, the notion of 'comity,' that is a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 401 U. S. 37, 44 (1971).

Mr. Thrall's conviction was a matter between the State of Montana and himself. He then was fully pardoned by a lawful act of the governor. The failure of the United States to honor the pardon in all of its ramifications is to intervene in the relationship between Mr. Thrall and the State.

III. FULL FAITH AND CREDIT

The pardon granted to petitioner should have been honored by the Secretary pursuant to 28 U. S. C. 1739. Since the pardon was full and complete and extended to the right to receive, possess, or transport firearms in commerce, it is clear as to its legal significance in Montana.

It should federally be accorded the same recognition in any situation involving its state character and significance under the full faith and credit statute, 28 U. S. C. 1739, third paragraph, providing that authenticated state nonjudicial records "shall have the same full faith and credit in every court and office within the United States and its territories and possessions as they have by law or usage in the courts or offices of the State Territory, or Pos-

session from which they are taken." *Taran v. United States*, 266 F. 2d 561, 566.

CONCLUSION

Petitioner's right to equal protection of the law inherent in Fifth Amendment due process have been denied by the Secretary's refusal to issue him a license as a dealer in firearms under 18 U. S. C. Sec. 923(a). Although he once stood convicted of a felony, that record was expunged by a gubernatorial pardon. As a consequence he should be treated as any other citizen applying for such a license.

The Secretarial act of denial rendered the pardon inefficacious and is contrary to recognized legal principles and comity. It is also contrary to the Full Faith and Credit mandate of 28 U. S. C. 1739 and illegal.

The petition for a writ of certiorari should be granted to permit review of the important questions raised by this case.

Respectfully submitted,

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APPENDIX

APPENDIX

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

No. 72-C-413

WALLACE F. THRALL,

Plaintiff,

v.

CECIL M. WOLFE,
Regional Commissioner,
Internal Revenue Service
and

GEORGE P. SHULTZ,
Secretary of Treasury,

Defendants.

DECISION AND ORDER

The defendants have moved for summary judgment, contending that there is no issue to be tried and that they are entitled to judgment as a matter of law. I agree with the defendants' contention that there is no issue of fact for trial. However, I believe that the plaintiff, rather than the defendants, is entitled to judgment as a matter of law.

The pleadings and the documents submitted in connection with the motion for summary judgment demonstrate that the plaintiff applied for a license as a dealer in firearms pursuant to 18 U. S. C. § 923(a), but his application was denied because of his having been convicted of a felony in a state court in Montana on June 26, 1942. Mr. Thrall was formally pardoned by the governor of Mon-

tana on December 8, 1971. The pardon provided, in part, as follows:

> ". . . I do hereby grant Wallace F. Thrall Full Pardon and Restoration of all Civil Rights lost by reason of the above conviction, and the right to receive, possess, or transport in commerce a firearm."

In support of a motion for summary judgment, the defendants urge that the decision to deny the license may not be disturbed unless the courts finds that the secretary was not authorized to reach his decision. The language relied on by the defendants is contained in 18 U. S. C. § 923(a) (3) and provides as follows:

> "If the court decides that the Secretary was not authorized to deny the application or to revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court."

The defendants also contend in their brief that their "basis for not giving effect to plaintiff's pardon by Montana authorities was that the Governor's pardon did not expunge plaintiff's 1942 conviction. . . ." I find no support for this contention; indeed, its rationale flies directly in the face of the clear language of the pardon itself. The pardon was a full and unconditional one and entitled Mr. Thrall to a restoration of full rights. In United States ex rel. Palermo v. Smith, 17 F. 2d 534 (2d Cir. 1927), the court stated:

> ". . . the effect of a free pardon in this country has been referred to by the Supreme Court as releasing the punishment and blotting out the existence of guilt, so that in the eyes of the law the offender is as inno-

cent as if he had never committed the offense. And 'it makes him, as it were, a new man, and gives him a new credit and capacity.' "

Although the defendants have moved for summary judgment, and the plaintiff has not, I believe that the plaintiff is entitled to the relief demanded in the complaint. Upon the submission of such a motion, it would be my intention to grant judgment in favor of the plaintiff.

Therefore, IT IS ORDERED that the defendants' motion for summary judgment be and hereby is denied.

Dated at Milwaukee, Wisconsin, this 21st day of November, 1972.

MYRON L. GORDON
U. S. District Judge

APPENDIX
4

In The

United States Court of Appeals

For the Seventh Circuit

No. 73-1539

WALLACE F. THRALL,

Plaintiff-Appellee,

v.

CECIL M. WOLFE, Regional Commissioner, Internal Revenue Service, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Wisconsin

72 C 413

Myron L. Gordon, Judge

ARGUED FEBRUARY 26, 1974 — DECIDED AUGUST 23, 1974

Before FAIRCHILED and CUMMINGS, *Circuit Judges,* and JAMESON, *Senior District Judge.**

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*Senior District Judge William J. Jameson of the District of Montana is sitting by designation.

FAIRCHILD, *Circuit Judge.* Plaintiff Thrall brought this action for review of a decision by the Internal Revenue Service denying his application for a license as a dealer and manufacturer of firearms. Defendants are the IRS Regional Commissioner and the Secretary of the Treasury. The district court denied defendants' motion for summary judgment. *Thrall v. Wolfe,* 352 F. Supp. 1074 (E. D. Wis., 1972). Subsequently, the court granted plaintiff's cross motion, and ordered the Secretary to reconsider the license application without regard to plaintiff's prior felony conviction. We reverse.

Plaintiff constructs replica antique guns and repairs modern hunting weapons. Incidentally to that business, he applied under 18 U. S. C. § 923[1] for a license as a dealer and manufacturer of firearms. Plaintiff, however, had been convicted in 1942 by a Montana state court of assault in the first degree (a felony) and sentenced to 5 years in prison. This offense involved the use of a loaded pistol. Section 922(g) prohibits any person convicted of a crime punishable by more than one year's imprisonment from shipping or transporting any firearm or ammunition in interstate commerce. Section 922(h) prohibits such person from receiving any firearm or ammunition which has been so transported. Section 923(d) (1) (B), in turn, bars issuance of a firearms dealer license to one so prohibited under § 922(g) and (h). On this basis, the IRS denied plaintiff's application.

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[1] 18 U. S. C. §§ 921-18 were created as chapter 44 of Title 18 by Title IV, "State Firearms Control Assistance", of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351, 82 Stat. 197, 225, and amended by Public Law 90-618, 82 Stat. 1214.

Plaintiff then obtained a pardon for his 1942 offense from the governor of Montana. The pardon provided: "I do hereby grant Wallace M. Thrall Full Pardon and Restoration of all Civil Rights lost by reason of the above conviction, and the right to receive, possess, or transport in commerce firearm."[2] Accordingly, plaintiff renewed his license application, and a hearing was held. The hearing examiner concluded that a state governor's pardon did not remove the disabilities which § 922 imposes. The Assistant Regional Director of the Internal Revenue Service agreed, and again refused to issue the license. Plaintiff then sought judicial review in the district court under 18 U. S. C. § 923(f) (3).

I.

Plaintiff asserts that a federal agency may not premise denial of a license on a pardoned state conviction. He argues that a pardon blots out guilt and, thus, that defendants must disregard the earlier offense.

The Supreme Court, construing Article II, § 2 of the Constitution, the presidential power to pardon federal offenders, stated in *Ex Parte Garland*, 71 U. S. (4 Wall.) 333, 380 (1866):

> "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when

---

[2]Under 18 U. S. C. App. § 1203(2), part of Title VII, "Unlawful possession or receipt of firearms", Omnibus Crime Control and Safe Street Act of 1968, the pardoning governor's use of this language made Title VII inapplicable to plaintiff. See footnote 9, *infra*, and accompanying text. However, § 1203 does not apply to Title IV, of which § 922 is a part.

> the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense."[3]

Subsequent authorities have questioned the import of the broad language quoted above and considered it unnecessary to the Court's holding. See *Richards v. United States,* 192 F. 2d 602, 607 (D. C. Cir., 1951), *cert. denied* 342 U. S. 946 (1952), *reh. denied* 343 U. S. 921; Williston, Does A Pardon Blot Out Guilt?, 28 Harv. L. Rev. 647 (1915). *Richards* held that a general pardon of all prior federal offenses for those serving in the armed forces during World War II did not preclude use of a pardoned conviction for impeachment purposes at a later federal trial.

Whatever the efficacy of a presidential pardon in removing the federal consequences of conviction, the issue here is the impact of a *state* pardon on a *federal* disability. In considering the effects in one sovereignty of pardons granted by another, the federal courts have exercised caution. In *United States ex rel. Palermo v. Smith,* 17 F. 2d 534, 535 (2d Cir., 1927), the second circuit refused to treat an Italian pardon for crimes committed in Italy as blotting out guilt for purposes of U. S. immigration law. Similarly, the Supreme Court has declined to require the states to accord the same consequences to a federal pardon as *Garland* suggests the federal government must: In *Carlesi v. New York,* 233 U. S. 51 (1914), the Court held that,

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[3]If Thrall's prior conviction were federal, and had he a presidential pardon, the Treasury's regulations would permit licensure. 26 C. F. R. § 178.142. Defendant's brief suggests that the Treasury considers this treatment constitutionally compelled. We express no opinion as to whether Article II, § 2 and *Garland* actually require that result.

despite a presidential pardon, New York could consider a prior federal conviction in applying its second offender statute. The Court noted that:

> "The issue is a narrow one and involves not the determination of the operation and effect of a pardon within the jurisdiction of the sovereignty granting it, but simply requires it to be decided how far a pardon granted as to an offense committed against the United States operates, so to speak, extraterritorially as a limitation upon the states, excluding them from considering the conviction of a prior and pardoned offense against the United States in a prosecution for a subsequent state offense." 233 U. S. at 57.

The Court concluded, noting that the action of the state did not constitute punishment for the pardoned offense, that the federal pardon exerted no such "extraterritorial" effect. Conversely, these cases suggest that there is nothing inherent in a state pardon which compels the federal government to disregard the pardoned offense.

In his complaint, plaintiff characterizes the refusal to license him as a failure to give full faith and credit to the Montana pardon. Article VI, § 1 of the Constitution, concerning "public acts, records, and judicial proceedings," speaks only to the states. By statute federal courts must also accord full faith and credit to state legislative acts and judicial records and proceedings. 28 U. S. C. § 1738. However, it is open to question whether the full faith and credit clause extends to requiring a state court to treat a sister state's pardons as eradicating guilt for the purpose here involved, even if the issuing state gives them that effect. Compare *People v. Dutton*, 9 Cal. 2d 505, 71 P. 2d

218, appeal dismissed 302 U. S. 656 (1937); *Groseclose v. Plummer*, 106 F. 2d 311, 313 (9th Cir., 1939), *cert. denied* 308 U. S. 614, with *People v. Terry*, 61 Cal. 2d 137, 37 Cal. Rpt. 605, 390 P. 2d 381, 388-89 *cert. denied* 379 U. S. 866 (1964). In any event, the Supreme Court has indicated that the choice of law requirements which Article IV, § 1 imposes depend on an analysis of the policies underlying conflicting laws. See generally *Hughes v. Fetters*, 341 U. S. 609 (1951).

We conclude that, in imposing on convicted felons an otherwise appropriate disqualification from regulated activity,[3a] Congress has the power to accord a state pardon differing effects in differing contexts, depending on its objectives in creating the disqualificaton. Neither the inherent nature of a pardon nor full faith and credit require that a state pardon automatically relieve federal disabilities[4]

[3a]See *United States v. Nasser*, 476 F. 2d 1111, 1117 (7th Cir., 1973).

[4]The consequences of a pardon expressly based on a determination of innocence need not be determined here. See *Richards v. United States*, *supra*, at 606. Similarly, this case does not involve the effect of a judicial order in the convicting jurisdiction setting aside the conviction. See *United States v. Hoctor*, 487 F. 2d 270 (9th Cir., 1973). These situations entail considerations which could lead to a different conclusion.

II.

The remaining issue is whether, in enacting Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, Congress intended that one holding a state pardon no longer be regarded as convicted within the meaning of § 922(g) and (h). We cannot conclude that Congress desired a gubernatorial pardon to have this effect.

Section 925(c) provides:

> "A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed . . . by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding conviction, and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest."[5]

It is unlikely that Congress intended, in effect, to confer an even broader power on the 50 state governors, free of the standards and limitations placed on the Treasury Secretary. If a state pardon were an alterative to relief under § 925(c), the exception for crimes involving a firearm would have little vitality. Further, Congress would have to have assumed that a state pardoning authority

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[5]Because his 1942 offense involved use of a pistol, Thrall is ineligible for this relief.

would always make a satisfactory investigation of the individual's record and reputation to determine his propensity for future violence. Regarding the parallel provision[6] for relief from the prohibition in 18 U. S. C. § 842(i) against a felon's transporting explosives, it has been observed:

> "Since Congress intended this determination to be made to the satisfaction of the Secretary, whose discretion is guided by federal policy, the scheme intended by Congress is disrupted if a state, guided by state policies, may make the determination to nullify a conviction for purposes of § 842(i)." *United States v. Hoctor*, 487 F. 2d 270, 274 (9th Cir., 1973) (dissenting opinion).[7]

We have considered whether another section of Title IV, § 927, evinces an intention to give effect to state pardons. That provision states:

> "No provision of this chapter shall be construed as indicating an intent on the part of Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together."

---

[6] 18 U. S. C. § 845(b).

[7] In *Hoctor*, the majority held that a state statute under which certain convictions are judicially expunged after satisfactory completion of probation relieved defendant of the disability in § 842(i). *Hoctor* may be distinguishable in that it involved a state court's judicially setting aside the original guilty verdict.

The section was doubtless inserted for the purpose of avoiding a claim of preemption. 18 U. S. C. ch. 44 deals with federal control of firearms, not the scope and efficacy of pardons; and it is difficult to view Montana's pardon as "on the same subject matter" as chapter 44. See *United States v. Hoctor, supra,* at 274-75 (dissenting opinion). Further, absent an express contrary intention, the scope of a federal statute normally is not dependent on state law. See generally *Jerome v. United States,* 318 U. S. 101, 104 (1942). In *McMullen v. United States,* 349 F. Supp. 1348 (C. D. Cal., 1972), the court held that application of a state law permitting a judge to treat an offense, punishable as a felony, as a misdemeanor and impose a reduced penalty did not avoid the licensing prohibitions in § 923:

> "We are dealing in this case with a federal licensing statute. We are governed, in interpreting that statute, by the terms employed by Congress as defined by the statute and the regulations under it. The only purpose in looking to state law in a case like the present one, is to determine the maximum penalty which could have been imposed. . . . The action taken under state law by the state Judge in disposing of the case does not change the nature and character of the offense insofar as its classification under the federal statute and regulations concerned." 349 F. Supp. at 1351.

Where Congress did intend that a state pardon exempt an individual from a portion of the federal gun control laws, it had no difficulty expressing that intention. A separate title of the Omnibus Crime Control and Safe Streets Act of 1968, Title VII, provides punishment for any felon "who receives, possesses, or transports in commerce or

affecting commerce" a firearm. 18 U. S. C. App. § 1202(a)(1). Section 1203(2) exempts "any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized . . . to receive, possess, or transport in commerce a firearm."[8] Thus, in Title VII, Congress has provided that a state pardon will have the effect which plaintiff here seeks to attribute to it in Title IV.[9]

We think that the absence of any comparable provision in Title IV (and the presence thereof a provision for limited administrative relief) signifies that Congress did not intend that a state pardon affect the disabilities in that title. The existence of a section in Title VII giving force to a state pardon as to "This title" is no indication that Congress desired that result in Title IV. In *United States v. Bass*, 404 U. S. 336, 344 (1971), the Court, in construing 18 U. S. C. App. § 1203(2), reviewed the legislative history of the Omnibus Crime Control and Safe Streets Act. The Court stated: "In our view, no conclusion can be drawn from Title IV concerning the correct interpretation of Title VII." The converse also appears to have validity. The two titles are of different, although overlapping, scope. In Title IV, Congress dealt, among other things, with the risks in allowing those convicted of serious crimes to ship or transport any firearm or ammunition in interstate or foreign commerce or to receive any firearm or ammunition which

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[8]Under this section, plaintiff's pardon exempted him from Title VII.

[9]We note two decisions which appear to assume, though not squarely to hold, that a state pardon would remove disability under Title IV as well as Title VII: *United States v. Dameron*, 460 F. 2d 294 (5th Cir., 1972) cert. denied, 409 U. S. 882 and *United States v. One Lot of Eighteen Firearms*, 325 F. Supp. 1326 (D. N. H., 1971).

has been shipped or transported in such commerce or engaged in business as a firearms or ammunition importer, manufacturer, or dealer, or be a collector. Title VII's subject matter is possession, receipt, or transportation in such commerce or affecting such commerce of a firearm.[10] The maximum penalties are different, with a longer period of imprisonment, though a lower fine, being authorized for most violations of Title IV than for violations of Title VII. Congress may have concluded that the dangers in the conduct covered by Title VII and not by Title IV were sufficiently smaller to justify giving effect to state pardons in Title VII, but not Title IV. Considering the Act as a whole, we cannot conclude that Congress intended that a gubernatorial pardon remove the disabilities imposed in § 922.

The judgment appealed from is reversed and the case is remanded to the district court for the entry of summary judgment for defendants.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

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[10]See *United States v. Bass, supra,* at 350, 351.